

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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LEROY COLLINS,

Case No. 2:16-cv-01090-GMN-VCF

Petitioner,

ORDER

v.

STATE OF NEVADA, et al.,

Respondents.

Petitioner Leroy Collins has submitted a *pro se* 28 U.S.C. § 2254 habeas corpus petition (ECF No. 1-1). He has now paid the filing fee (ECF No. 5). However, Collins' petition shall be dismissed as successive.

This court's docket reflects that Collins has previously filed at least one federal habeas petition challenging the same judgment of conviction, C082510. 28 U.S.C. § 2244(3)(A) provides: "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." Where a petition has been dismissed with prejudice as untimely or because of procedural default, the dismissal constitutes a disposition on the merits and renders a subsequent petition second or successive for purposes of 28 U.S.C. § 2244. *McNabb v. Yates*, 576 F.3d 1028, 1029-1030 (9th Cir. 2009); *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th Cir. 2005).

On January 7, 2016, Collins' habeas petition challenging the same state judgment of conviction in federal case no. 2:13-cv-00011-JAD-NJK was denied, and

1 judgment was entered (2:13-cv-00011-JAD-NJK, ECF Nos. 19, 22). The instant petition
2 is, therefore, a successive petition, which requires petitioner to seek and obtain leave of
3 the appeals court to pursue. See 28 U.S.C. § 2244(b)(3) et seq. Accordingly, Collins'
4 petition is dismissed with prejudice as successive.

5 Reasonable jurists would not find the court's conclusions to be debatable or
6 wrong, and the court will not issue a certificate of appealability.

7 **IT IS THEREFORE ORDERED** that the Clerk shall detach and file the petition
8 (ECF No. 1-1) and shall serve the petition and a copy of this order on respondents.

9 **IT IS FURTHER ORDERED** that the Clerk shall add Adam Paul Laxalt, Nevada
10 Attorney General, as counsel for respondents.

11 **IT IS FURTHER ORDERED** that the petition is **DISMISSED** with prejudice as
12 successive.

13 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

14 **IT IS FURTHER ORDERED** that the Clerk shall enter judgment accordingly and
15 close this case.

16 DATED: 19 December 2016.

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18 GLORIA M. NAVARRO, CHIEF JUDGE
19 UNITED STATES DISTRICT COURT
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